

46 Am. Jur. 2d Judges § 204

American Jurisprudence, Second Edition | February 2022 Update

Judges

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IX. Disqualification to Act in Particular Case

D. Waiver and Estoppel

§ 204. Withdrawal or abandonment of objection to disqualification of judge as effecting waiver or estoppel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  53

A.L.R. Library

[Time for asserting disqualification of judge, and waiver of disqualification](#), 73 A.L.R.2d 1238

A party who withdraws a motion to disqualify waives the right to disqualify the judge.¹

An express withdrawal of a disqualification motion in a retrial before the same judge who was disqualified from the original trial constitutes a waiver of the right to appeal the judge's failure to disqualify from the retrial.²

A party abandons a disqualification motion where the party never asks the court to rule on the motion, but expresses the desire to conclude the case expeditiously.³

Where a statute provides that the mere filing of an affidavit of prejudice absolutely disqualifies the judge to hear the case,⁴ some courts have held that the disqualification may not be waived by a subsequent withdrawal of the affidavit.⁵ Other jurisdictions have held that an affidavit of prejudice may be withdrawn after it has been filed, in which case the disqualification resulting from the filing of the affidavit is waived.⁶

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Footnotes

- 1 Dishman v. State, 525 N.E.2d 284 (Ind. 1988).
- 2 State v. Rudolph, 970 P.2d 1221 (Utah 1998).
- 3 People v. Flynn, 341 Ill. App. 3d 813, 275 Ill. Dec. 296, 792 N.E.2d 527 (2d Dist. 2003).
- 4 §§ 184, 191.
- 5 In re Woodside-Florence Irr. Dist., 121 Mont. 346, 194 P.2d 241 (1948).
- 6 Lebeck, State ex rel., v. Chavez, 1941-NMSC-016, 45 N.M. 161, 113 P.2d 179 (1941).

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